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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,640	01/04/2002	Jonathan S. Stinson	23,369-110	9194

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PATENT DEPARTMENT
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EXAMINER

PANTUCK, BRADFORD C

ART UNIT PAPER NUMBER

3731

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/038,640

Applicant(s)

STINSON, JONATHAN S.

Examiner

Bradford C Pantuck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-9, 11-25 and 31-75 is/are pending in the application.
- 4a) Of the above claim(s) 11-13, 18-24 and 31-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 8, 14, 15, 17, 25, 52-57, and 59-75 is/are rejected.
- 7) ☒ Claim(s) 6 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, 8, 14, 15, 17, 25, 52-56, 63-65, 68-75 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,449,373 to Pinchasik et al. Regarding Claims 1-3, 14, 15, 17, 25, 52, 53, 56, 68-75, Pinchasik discloses a stent (100) including at least one strand with a plurality of discreet tubular segments, in alternating sequence. First segments (102) are all stiffer (axially) than alternating segments (112), since segments (112) bend and segments (102) do not when the stent is applied to the inside of a curved blood vessel [Fig. 2B]. Second segments (112) will more readily conform to the curvature of a blood vessel after being deployed [Fig. 2B], i.e. the second segments (112) have a “lower radial force level”.
2. Regarding Claims 8, 54, 55, the second segments (112) are capable of applying more force in an axial direction than segments (102). For example, during installation, the balloon catheter could be pivoted to cause section (102) to push outwards on the inside of a blood vessel.
3. Regarding Claim 63, first segment (102) has twice as many filaments as second segment (112): when looking longitudinally, each unit of member (102) has two strands, with only one strand (segment 112) extending therefrom.

4. Regarding Claims 64 and 65, the first segments have two different "types," i.e., shapes. Each type is made out of stainless steel [column 2, lines 43-48].
5. Claims 1, 5, 7, 57, 59-62, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,064,435 to Porter. Porter discloses a helically wound stent [Fig. 6] with 5 discrete sections. Flexible strands cross in opposite directions to form crossing angles. First sections (62, 58 and 66) are stiffer because they are either "reinforced" (64 and 66) [column 7, lines 38-39] or formed of overlapped mesh (section 58) [column 7, lines 27-29]. Second sections (54 and 56) will more readily conform to a curvature of the inside of a blood vessel because they are only comprised of one, non-reinforced mesh.
6. Regarding Claim 60, the nominal (inner) diameter of the second sections will be smaller than the nominal diameters of the first sections because the second sections have a thicker wall due to either reinforcement with other fibers or overlapping.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,449,373 to Pinchasik et al. in view of U.S. Patent No. 6,045,568 to Igaki et al. Pinchasik discloses a stent (as described above) having different types of filaments, having different shapes. Igaki teaches forming a stent out of a

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bioabsorbable material so that the stent will absorb into the body in several months, a prospect which is “favorable for the living body” [column 5, lines 65-67]. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to form Pinchasik’s whole stent out of bioabsorbable material so that it will dissolve within a few months of implantation, maintaining patency in a previously occluded blood vessel, a result which is favorable to the recovery of the patient, as taught by Igaki et al.

Allowable Subject Matter

8. Claims 6 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Publication No. US 2002/0193864 to Khosravi et al.

Publication No. US 2004/0230293 to Yip et al.

Publication No. US 2004/0236404 to Penn et al.

Publication No. US 2005/0004657 to Burgermeister

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Arguments

11. Applicant's arguments, see "REMARKS", filed November 29, 2004, and (combined with the added claim language) with respect to the rejection(s) of claim(s) 1-8, 10, 14-15, 17, and 25-30 under 35 U.S.C. 102(b), 102(e), and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the references applied in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (571) 272-4701. The examiner can normally be reached on M-F 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 25, 2005

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ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
2/25/05